Supreme Court, U.S.
FILED

961724 APR 28 1997

OFFICE OF THE CLERK

No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

ROY LEE HOSCH,
Petitioner

vs.

GEORGIA DEPARTMENT OF HUMAN RESOURCES, FULTON COUNTY SUPERIOR COURT, KAATHRYN REEDER, MARYE WARE,
Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the 11th Judicial Circuit

PETITION FOR A WRIT OF CERTIORARI

ROY LEE HOSCH,
2822 Cloverhurst Drive
East Point, Georgia 30344
(404)762-1417
Petitioner

JENNIFER M. TECHMAN
Assist. Attorney General

PAUL SMITH
Long, Aldridge & Norman
Counsel for Respondents

38pp

QUESTIONS PRESENTED

1. **Should the Petitioner be permitted to recover excessive support payments (and damages) involuntarily made through the use of garnishments, tax refund attachments and threats of imprisonment, which were not under any legal obligation, such as a court order or other requirement, to be paid where the evidence proves that the excess exists when a proper tribunal refuses to allow an opportunity to present evidence by intimidations and threats of imprisonment.**

2. **Is the Child Support Enforcement Act sufficient authority for the taking of tax refunds for back-support where the collecting agent or agency fails or refuses to verify that such a debt exists, including court proceedings, and pursuing such a collection using two or more jurisdictions that are totally and independently pursuing the same collection, which would result in two or more independent collections of the same debt, where evidence, if reviewed, would show that no such debt exists.**

3. **Is due process of law denied, where the trial judge halts a proceeding and issued an order of "failure to provide proof" for the purpose of suppressing a litigant's cause, where, if proof by evidence were allowed, would require a decision reflecting such proof by evidence.**

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case.

Counsel for respondents Georgia Department of Human Resources, Fulton County Superior Court, and Kathryn Reeder:

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Atlanta, Georgia 30034

Counsel for Respondent Marye Ware
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Other participant(s):

JUANITA HICKS[√], Clerk of Fulton County Superior Court

Counsel:

George M. Geeslin
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Atlanta, Georgia 30309

[√] See footnote(4) of APPENDIX D, page 7a

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CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

ROY LEE HOSCH,

Petitioner

v

GEORGIA DEPT. OF UMAN RESOURCES, FULTON COUNTY SUPERIOR COURT, KATHRYN REEDER, MARYE WARE,

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the 11th Judicial Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Roy Lee Hosch, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the 11th Judicial Circuit.

OPINION BELOW

The opinion of the Court of Appeals affirms the decision of the District Court's dismissal which alleges that "plaintiff seeks to have this court adjudicate issues which are, and were, central to the state court proceedings" and is reproduced in the APPENDIX filed at 1a, 2a , 12a and 13a. The unreported opinions of the district court case are reproduced at 3a and 4a. The Fulton County Superior Court decisions are reproduced at 10a and 11a.

STATEMENT OF JURISDICTION

The Court of Appeals entered it judgment on January 9, 1997 and denied Petitioners Petition for Rehearing on March 21, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 1332.

STATUTE INVOLVED

TITLE 42 USC § 1983 "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress and 42 USC § 651 (see footnote on page 13).

STATEMENT OF THE CASE

The Petitioner filed a complaint in the U.S. District Court in Atlanta, Georgia on January 11, 1996 after the Fulton County Judge Charles A. Wofford, as agent for the Respondent Fulton County Superior Court, failed to present him with a court order on a hearing inwhich he sort to recover $5,058.46 in excess child support payments.

Judge Wofford failed to provide the Petitioner with a court order, after denying the Petitioner the right to present

his arguments and evidence[1] agreed to at previous hearing, (Armstrong v Mango, 380 US 545, 552, 85 S. Ct. 1187 (1965). "Judges' refusal to consider evidence and psychologist reports denies due process right to "meaningful hearing."), as required by OCGA 15-6-21[2]. A judge is allowed 90 days after arguments to provide such an order for counties with more that 100,000 inhabitants under subsection (b) of OCGA 15-6-21.

The order was filed on July 24, 1995, fourteen days after the hearing, without a copy being provided to the Petitioner; effectively denying the Petitioner his right to appeal the matter through the state court system, whereby, due process of law was denied the Petitioner in violation of Amendment 5 of the U.S. Constitution, Note 7, "A denial by a state of rights or privileges specifically embodied in this and the Amend 6 may, in certain circumstances, operate to deprive a person of due process of law in violation of U.S. Constitution, Amendment 14," and note 8, "Due process of law, under this amendment and Amend. 14, require that action by a state through any

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[1] (a) Ref. District Court Record, "Plaintiff's Answers to Mandatory Interrogatories," ATTACHMENT B, evidence relied on.

(b) PIERSON V. RAY, 386 U.S. 547 at 567 (1967) "When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgement; he acts no longer as a judge, but as a "minister" of his own prejudice."

[2] OCGA 15-6-21 (c) When he has so decided, it shall be the duty of the judge to file his decision with the clerk of the court in which the cases are pending and to notify the attorney or attorneys of the losing party of his decision.

of its agencies must be consistent with fundamental principles of liberty and justice which lies at base of our civil and political institutions and which are designated as the law of the land. This amendment and Amen 14 protect the people of the U.S. from violations by state or fed. governments, but not from individual trespasses, except for violations of a federal statute enacted in pursuance of federal Constitution."

The court order was obtained from the case file after 90 days by the Petitioner.

The Petitioner, seeking to obtain an audit, presented evidence to support his claims, that excessive child support payments were obtained through garnishment of his wages beginning in February, 1985.

A Superior court order establishing a concrete starting point and fixed amount, for accounting purposes, State court garnishments[3] pay records, money orders and personal checks covering the period from February, 1985 until July, 1995 was presented to support his claim, and which showed that payments in excess of $5,058.46 did occur. And, that the $5,058.46 was taken during several years of continuous wage garnishments which began in February, 1985 to October, 1988. Money Orders and personal checks were used up to June of 1995.

The several respondents entered into a common conspiracy to deprive the Petitioner of his rights to "due

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[3] Separate and independent garnishments for specific amounts, not to be confused with "a continuing garnishment," which expires when a debt expires. Reverting to "continuing garnishments.

process of law" and to recover his personal property, $5,058.46, ref. 18 USC § 241[4] and 18 USC § 242[5]

The actions of the respondent, Fulton County Superior Court are demonstrated in the actions of it's agent Judge Charles A. Wofford and are unjustified, ref. Amendment 5, note 233 of the U.S. Constitution; "Weight And Sufficiency of Evidence:" Administrative decision is "arbitrary or capricious," so as to violate this clause, when it is not supported by evidence or where there is no reasonable justification for the decision. Canty v Board of Ed City of New York, D.C.N.Y. 1970, 312 F. Supp. 254.

The Respondent, Kathryn Reeder, Special Assistant Attorney General misrepresented the facts before Judge Wofford by telling him that "there was no

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[4] 18 USC § 241: Conspiracy Against Rights of Citizens it is a federal criminal offense, if two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised such right or privilege, such persons may be fined and/or imprisoned;

[5] 18 USC § 242: Deprivation of Rights Color of Law it is a criminal offense if under color of any law, statute, ordinance, regulation, or custom a person willfully deprives an inhabitant of any State of his rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, and punishable by fine or imprisonment for no more than one year.

discrepancy," a position Judge Wofford intended to defend by attempting to provoke the Petitioner into verbal outbreaks, providing an opportunity to cite the Petitioner for contempt of court, which would have resulted in the Petitioner being placed in jail. Ms Reeder did not review the Petitioner's financial records and is a crime under 18 USC § 1512(b)(1) "Whoever ...influence, delay, or prevent the testimony of any person in an official proceeding."

The Respondent, Marye Ware, is employed by the Child Support Services of Georgia at 57 Forsyth Street, N.W. Suite 400, Atlanta, Georgia 30303,(Atlanta Judicial Circuit) and is identified in the complaint as the keeper of the record. Her signature appears on the papers and is assumed to be responsible for maintenance of the record. Maintaining false reports is a crime under 18 USC 2073 "Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, with like intent, makes a false report of such moneys or securities...makes a false report...shall be fined or imprisoned."

The case record (# 590000785CSWCS) is located at this office in Fulton County, the county of residence of the Petitioner.

Ms Ware has never spoken, met with, or had any contact with the Petitioner in any manner, including the Petitioner's appearances in court. Neither has Ms Ware reviewed any of the Petitioner's financial records showing payments of Child Support.

The Respondents Kathryn Reeder and Marye Ware, operating from the Atlanta office, 57 Forsyth Street, N.W. Suite 400, are acting on behalf and as agents for the Respondent Georgia Department of Human Resources (DHR)[6] and bears the ultimate responsibility for their actions.

The Petitioner also alleged the extent to which the several respondents would go to collect the $5,058.46 for a second time, with the aid to the "Child Support Enforcement Act" as their authority; which included the use of two judicial circuits contrary to state law, ref. OCGA 9-2-5 ann. "Plaintiff cannot pursue at same time against same defendant a cause of action based upon the same subject matter in two different courts." Which resulted in the two separate jurisdictions acting separately and independently of each other, to take the Petitioner's federal and state tax refunds; KINSELLA V. UNITED STATES 361 US 234, 4 L Ed 2d 268, 80 S Ct 297 (1960 "Due process has to do with denial of fundamental fairness, shocking to universal sense of justice, it deals neither with power nor with jurisdiction, but with their exercise".

Opposition was given to a Motion to Dismiss the complaint, inwhich Ankenbrandt 91-367[7] was cited for the district court to accept jurisdiction.

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[6] DHR Abbreviation for the "Georgia Department of Human Resources."

[7] Ankerbrant S. Ct. 91-367,..the federal courts have a virtually unflagging obligation….to exercise the jurisdiction given them," further stating that "It is, that when a court of

The District Court granted the respondents' motions to dismiss, and the case was appealed to the 11th Circuit Court of Appeals.

While on appeal, the Petitioner exposed the allegation(s) previously stated, as to the extent in which the Georgia Department of Human Resources and it's agents would go to collect additional money from the Petitioner.

On "Motion to Consider Amending his appeals brief, the Petitioner presented documents showing that the Internal Revenue Service turned over to the DHR $1,526.00 due to a claim placed by Child Support Enforcement (Stone Mountain Judicial Circuit) at 750 Commerce Drive, Suite 100, Decatur, Georgia 30030, on May 13, 1996.

And, on May 16, 1996, the Georgia Department Of Revenue informed the Petitioner of his state tax refund, $779.48, being taken by the DHR showing the Petitioner still owing $3, 176.00 in back child support., This amount was corrected on July 11, 1996 to reflect the $779.48 reduction, but not the $1,526.00 turned over to DHR by

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competent jurisdiction over the subject matter and parties, is unable of

itself to enforce the decree summarily upon the husband, that courts of equity will interfere...

District Court is not asked to grant a divorce, alimony, or child custody decree. Held that suit is appropriate for exercise of 28 U.S.C. 1332 jurisdiction.

the federal Internal Revenue Service. This fact was presented to the Court of Appeals in a "Second Motion to Consider Amending the Petitioner's Brief.

On September 26, 1996, the Petitioner received a statement from the DHR, Child Support Services of Georgia, from the Atlanta office, inwhich they had adjusted the amount of child support debt claimed to $870.00 showing their allowance for the $1,526.00 in the accounting, but has done nothing to make an effort to consider the $5,058.46 central to the Petitioner's claims.

The Respondents would not have made the aforementioned adjustments, or collected records from the "Stone Mountain Judicial Circuit" office in Dekalb County had in not been for the Petitioner presenting this information to the Court during appeal; records that confirms the DHRs direct and wilful involvement in the conspiracy to deprive the Petitioner of his personal property.

The Court of Appeals agreed with the District Court and dismissed the Petitioner's appeal. NAACP v. ALABAMA 377 US 288, 12 L Ed 2d 325, 84 S Ct 1302 (1964) "In determining whether state action is violation of due process clause of Fourteenth Amendment, it is immaterial whether state has acted solely through its judicial branch since whether legislative or judicial, it is still application of state power which must be scrutinized."

A "Motion for Rehearing" was filed with the Court of Appeals inwhich the Petitioner contended that "state court records" (garnishment pay records) along with money orders and personal checks, are the only records available by which the Petitioner my plead and prove his claim .

The Petitioner contends that the actions of the several respondents are "Continuing financial crimes" under 18 USC § 225[8] by unlawfully obtaining and retaining the Petitioner's personal property, $5,058.46, ref. 18 USC § 1962[9] taking the position that the Petitioner is not entitled to his personal property. 42 USC § 1982 "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

REASONS FOR GRANTING THE PETITION

This Court should grant the writ to resolve the issue of the Petitioner's efforts and rights to recover his $5,058.46, inwhich an audit and adjustment was all that was originally expected, taken under pretense and color of child support payments that was obtained under "state court procedures," an act which is properly termed a "seizure"; 466 U. S., at 113.No. 91-6516, and EDWARD SOLDAL, et ux., PETITIONERS v. COOK COUNTY, ILLINOIS et al. "A `seizure' of property occurs where there is some meaningful interference with an individual's

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[8] 18 USC § 225: (a)(1) Whoever - organizes, manages or supervises a continuing financial crimes enterprise

[9] 18 USC § 1962 c : It shall be unlawful for any person employed or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or…. "note 9 cont." participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

possessory interests in that property." Commenced under color of legal process as garnishments, and protected by the several Respondents and continues to be perpetuated by the Respondents under color of the "Child Support Enforcement Act" (Yick Wo v. Hopkins, 118 US 356 (May, 1986). "A law that is fair on its face but unfairly enforced is unconstitutional."), and related state statutes, in pursuing the Petitioner's federal and state income tax refunds, (U.S. Constitution, Amendment 5, note 46, "A person has the right to be free from unauthorized actions of government officials which substantially impair his property interests."), without determining if such a debt exists, and with the aid of at least two separate state judicial circuits, resulting in said money being paid twice. DUNN V. BLUMSTEIN, 92 S. Ct. 995, 405 U.S. 330 (1972) "In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity."

STRINGER V. DILGER, 313 F.2d 536 (U.S. Ct. App 10th Circ. - 1963) "Actions by state officers and employees, even if unauthorized or in excess of authority can be actions under 'color of law."

EX PARTE VIRGINIA, 100 U.S. 339, 346-347 (1879) State officials acting in their official capacities, even if in abuse of their lawful authority , generally are held to act "under color" of law. This is because such officials are " clothed with the authority" of state law, which gives them power to perpetrate the very wrongs that Congress intended Section 1983 to prevent. "

UNITED STATES V. BROWN, 381 U.S. 303, 66 S. Ct. 1073 (1946)"Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to

inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution."

The courts below determined that only this Court[10] has the authority to entertain this matter, determining that Petitioner "adjudicate issues...central to the state court proceedings," (relying of the Rooker-Feldman doctrine) and lacks subject matter jurisdiction[11] possibly due to court records, (garnishment pay records)[12] , being used as evidence. The Petitioner has made no demand to alter or set aside any state judgment, see footnote 4, page 6, "Ankerbrant S. Ct. 91-367.

TITLE 28 USC § 2106 - The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

BLOOD V. MARGIS, 322 F.2d 1086 (1971) "The pleading of one who pleads pro se for the protection of civil rights should be liberally construed."

The use of "state court procedures" clearly shows that the seizure of the $5,058.46 was not "voluntary" on

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[10] See "DISCUSSION" in APPENDIX D, page 5a

[11] See "DISCUSSION" in APPENDIX D, page 7a

[12] 18 USC § 3497. Account as evidence of embezzlement: "Upon the trial of any indictment against any person for embezzling public money it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the General Accounting Office.

the part of the Petitioner, as defined in a descenting opinion by Justice Blackmun in Stroop, S.Ct. 89-535; "The Secretary considers voluntary payments by an absent parent to be "child support" within the meaning of the disregard provision. 53 Fed. Reg. 21644 (1988)."

U.S. 917, 65 L.Ed.2d 1180 (1980) "If a law has no other purpose than to chill assertion of constitutional rights by penalizing those who choose to exercise them, it is patently unconstitutional."

BODDIE V. CONNECTICUT, 92, S.Ct. 780, 401 U.S. 371. 28 L.Ed.2d 113 conformed to 329 F. Supp. 844 (1971) "Within limits of practicability, a state must afford to all individuals a meaningful opportunity to be heard. . Whenever one is assailed in his person or his property, there he may defend. . .The right to meaningful opportunity to be heard within limits of practicality must be protected against denial by particular laws that operate to jeopardize it for particular individuals.

TITLE 18 USC § 666. (a) Whoever, ...(1) being an agent of an organization, or of a State, local,...(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that (i) is valued at $5,000 or more, and (B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, "intending to be influenced or rewarded"[13] in

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[13] 42 USC § 651. Authorization of appropriations: For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living,... obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this

connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or corruptly gives, offers, or agrees to give anything of value to any person, ...involving anything of value of $5,000 or more; shall be fined under this title, imprisoned not more than 10 years, or both.

WESTBERRY V. FISHER, 309 F.Supp. 95 (District Ct.- of Maine - 1970 "Governmental immunity is not a defense under (42 USC 1983) making liable every person who under color of state law deprives another person of his civil rights."

LAVERNE V. CORNING, 316 F.Supp. 629 "As long as a defendant who abridges a plaintiff's constitutional rights acts pursuant to a statute of local law which empowers him to commit the wrongful act, an action under the Federal Civil Rights statute is established. 42 U.S.C.A. 1981 et seq."

OCGA 9-10-2: "Discretionary act" defined. A discretionary act calls for the exercise of personal deliberation and judgment, which is turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed; and Miree v. United States, 490 F. Supp. 768 (N.D. Ga. 1980),

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part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

This 25th day of April, 1997

Roy L Hosch

ROY LEE HOSCH, Petitioner
2822 Cloverhurst Drive
East Point, Georgia 30344
(404)762-1417

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing "PETITION FOR WRIT OF CERTIORARI" to the 11th Circuit Court of Appeals prior to filling the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon,

JENNIFER M. TECHMAN
Georgia Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30034

PAUL SMITH
Long, Aldridge & Norman
Suite 5300
One Peachtree Center
303 Peachtree Street
Atlanta, Georgia 30308

George M. Geeslin
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Suite 604
Atlanta, Georgia 30309

This 25th day of April, 1997

Roy L Hosch

Roy Lee Hosch
2822 Cloverhurst Drive
East Point, Georgia 30344
(404)762-1417

APPENDIX

APPENDIX A - COURT OF APPEALS DECISION AFFIRMING DISTRICT COURT DECISION

IN THE UNITED STATES COURT OF APPEALLS
FOR THE ELEVENTH CIRCUIT

No. 96-8454

Non-Argument Calendar

D.C. Docket No 1:96-CV-75-HTW

FILED: JAN 9, 1997

ROY LEE HOSCH,
Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF HUMAN RESOURCES, FULTON COUNTY SUPERIOR COURT, KATHRYN REEDER, MARYE WARE,
Defendants-Appellees.
Appeal from the United States District Court
for the Northern District of Georgia

Before HATCHETT, Chief Judge, EDMONDSON and BARKETT, Circuit Judges.

PER CURIAM:

Roy Lee Hosch appeals the district court's dismissal of his civil rights action under 42 U.S.C. § The district court granted the motion to dismiss finding that Hosch was essentially seeking review of issues central to a state court proceeding for child support and, therefore, the action was barred by the Rooker-Feldman doctrine. We find no error.

AFFIRMED.

APPENDIX

APPENDIX B - ORDER DENYING APPELLANT'S FIRST AND SECOND MOTIONS TO CONSIDER AMENDMENT TO HIS BRIEF.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED: JAN 9, 1997

No. 96-8454
Non-Argument Calendar

D.C. Docket No 1:96-CV-75-HTW

ROY LEE HOSCH,
Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF HUMAN RESOURCES, FULTON COUNTY SUPERIOR COURT, KATHRYN REEDER, MARYE WARE,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Georgia

ORDER :

Appellant's "motion to consider amendment to brief of the appellant" and "second motion to consider amendment to brief of the appellant," construed as motions to file a supplemental brief, are denied.

S/ R. Barkett
UNITED STATES CIRCUIT JUDGE

APPENDIX

APPENDIX C - DISTRICT COURT JUDGMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROY LEE HOSCH,

Plaintiff

vs.

GEORGIA DEPARTMENT OF HUMAN RESOURCES, et al.,

Defendants,

CIVIL ACTION NO.

1:96-cv-75-HTW

JUDGMENT

This action having come before the court, Honorable Horace T. Ward, United States District Judge, for consideration of the defendants' motions to dismiss, and the court having granted said motions, it is

Ordered and Adjudged that the plaintiff take nothing, that the defendants recover of the plaintiff their costs of this action, and this action hereby is DISMISSED.

Dated at Atlanta, Georgia, this 21st day of March 1996.

Luther D. Thomas, Clerk By: /S B. McDonnell
B. McDonnell
Deputy Clerk

Prepared, Filed and Entered
in the Clerk's Office
March 21, 1996
Luther D. Thomas, Clerk
By: /S B. McDonnell
B. McDonnell, Deputy Clerk

APPENDIX

APPENDIX D - ORDER OF DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROY LEE HOSCH, Plaintiff vs. GEORGIA DEPARTMENT OF HUMAN RESOURCES, FULTON COUNTY SUPERIOR COURT, KATHRYN REEDER, and MARYE WARE, Defendants	CIVIL ACTION NO. 1:96-cv-75-HTW

ORDER OF COURT

This matter is before the court on (1) the Georgia Department of Human Resources', Fulton County Superior Court's and Special Assistant Attorney General Kathryn Reeder's motion to dismiss. (2) Marye Ware's motion to dismiss, (3) Fulton County Superior Court's and Juanita Hicks' motion to dismiss or, alternatively, for judgement on the pleadings, and (4) plaintiff's petition to forego pretrial procedures and proceed with hearing[1].

BACKGROUND

This matter relates to a child support enforcement proceeding, in Fulton

[1] This court notes that plaintiff is proceeding pro se

County Superior Court, in which Senior Judge Charles Wofford entered an order on July 20, 1995 finding plaintiff in willful contempt of that court's prior order to pay child support. Defendant Marye Ware is an employee of Child Support Services of Georgia, a private agency that contracts with the Georgia Department of Human Resources (*DHR*) to provide child support enforcement services. Defendant Kathryn Reeder is a Special Assistant Attorney General who handles child support enforcement actions on behalf of DHR. As a result of his dissatisfaction with the above-referenced superior court proceedings, plaintiff commenced the instant action.

DISCUSSION

A. The Georgia Department of Human Resources', Fulton County Superior Court's, and Special Assistant Kathryn Reeder's Motion to Dismiss

The DHR, Fulton County Superior Court, and Special Assistant Attorney General Kathryn Reeder (collectively, the "State Defendants") move to dismiss the claims against them on the grounds that this court lacks subject-matter jurisdiction. More specifically, the State Defendants contend that the Rooker-Feldman doctrine prohibits a federal court from taking jurisdiction over any issue which is inextricably intertwined with issues that have already been litigated in the state court system. Plaintiff's opposition to the State Defendants' motion is somewhat confusing and does not address the Rooker-Feldman doctrine.

It is well-established that a federal district court has no jurisdiction to review the final decisions of state courts because

that power is exclusively reserved for the United States Supreme Court. Rooker v. Fidelity Trust Co., 263 U.S. 44 S. Ct. 149 (1923).
As recently stated by the Supreme Court:

> "(L)ower federal courts possess no power whatever to sit in direct review of state court decisions." If the constitutional claims presented to a United States District Court are enextricably intertwined with the state court's denial [of a claim] in a judicial proceeding … then the District Court is in essence being called upon to review the state-court decision. This the District Court may not do.

District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 483-84 n. 16, 103 S. Ct. 1303, 1316 n. 16 (1983) (quoting Atlantic Coast Line R. Co. v. Locomotive Engineers, 398 U.S. 281, 296, 90 S. Ct. 1739, 1748 (1970). Relying on Feldman, the Eleventh Circuit has held that federal district courts may not decide issues inextricably intertwined with state court decisions, even when those issues were not pressed in the state court proceedings. Staley v Ledbetter, 837 F. 2d 1016 (11th Cir. 1988); Waller v Hill, No. 91-8121, slip op. At 7 (11th Cir. Dec. 31, 1991),[2]

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[2] The Eleventh Circuit provides by rule that unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, however, provided that a copy of the unpublished opinion is attached to the brief.

Moreover, the Rooker-Feldman doctrine applies to "non-final" judgments - including those which have not been appealed. Atlantic Coast Line R. Co., 398 U.S. at 296, 90 S. Ct. At 1748. Simply put, the Rooker-Feldman doctrine "broadly encompasses any attempt to have a district court adjudicate issues which are central (or should have been central) to a state court decision." Waller, slip op. At 7.

In the instant case, plaintiff seeks to have this court adjudicate issues which are, and were, central to the state court proceedings,[3] Thus, this court lacks subject matter jurisdiction and GRANTS the State Defendants' motion to dismiss.

B. Fulton County Superior Court's and Juanita Hicks' Motion to Dismiss

Fulton County Superior Court and Juanita Hicks[4] contend that plaintiff's complaint should be dismissed as to them under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief could be granted. Plaintiff has not filled a response to this motion. While it appears that the motion has merit and should be granted, Fulton County

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Eleventh Circuit Rules, Rule 36-2, 28 U.S.C.A. Here, the State Defendants attached a copy of the Waller case to their brief.

[3] Further, plaintiffs complaint presents issues almost exclusively relating to his child support obligations - a matter over which this court lacks jurisdiction.

[4] Ms. Hicks was not named as a defendant, but - as the Clerk of Fulton County Superior Court - she was served with Plaintiff's complaint and joined in this motion.

Superior Court already has been dismissed (see supra); thus, this motion is moot.[5]

C. Marye Ware's Motion to Dismiss

Defendant Marye Ware moves to dismiss plaintiff's complaint on the grounds that this court lacks subject-matter jurisdiction under the Rooker-Feldman doctrine.[6] Plaintiff has not filled a response to this motion. For the reasons set forth in Section A. supra, this court GRANTS defendant Marye Ware's motion to dismiss.

D. Plaintiff's Petition to Forego Pretrial Procedures and Proceed with Hearing

As stated above, plaintiff's claims against all defendants have been dismissed, Thus, while this motion appears to lack any merit, there is no reason to further discuss it. This motion is hereby DISMISSED as MOOT.

CONCLUSION

Therefore, after due consideration, this court (1) GRANTS the Georgia Department of Human Resources', Fulton County Superior Court's and Special Assistant Attorney General Kathryn Reeder's motion to dismiss, (2) GRANTS Marye Ware's motion to dismiss, (3) DISMISSES as MOOT Fulton County Superior Court's and Juanita Hicks' motion to dismiss or alternatively, for judgment on the pleadings,

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[5] Fulton County Superior Court and Juanita Hicks also filed an alternative motion for judgment on the pleadings, which motion obviously is moot.

[6] Defendant Marye Ware adopted the arguments made in the State Defendant's brief in support of their motion to dismiss.

and (4) DISMISSES as MOOT plaintiff's petition to forego pretrial procedures and proceed with hearing. The court further instructs the clerk to DISMISS this case.[7]

SO ORDERED, this 18th day of March, 1996.

/S HORACE T. WARD
HORACE T. WARD, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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[7] As a courtesy to the clerk of court, this court notes that this Order terminates entry nos. 7. 10, 11 and 12 on the docket sheet.

APPENDIX

APPENDIX E - SUPERIOR COURT CONTEMPT ORDER

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GA Dept of Human Resources, ex rel	FILED: JUNE 7, 1995
Allison Hosch	
Petitioner	CIVIL ACTION NO.
v.	FILE NO.: C79424
Roy Lee Hosch, Respondent	

CHILD SUPPORT ENFORCEMENT
CONTEMPT ORDER

The above and foregoing matter having come on regularly before the Court on 6/05/95, and Respondent having been lawfully served, and Respondent having appeared and the parties having presented evidence.

IT IS HEREBY ORDERED AND ADJUDGED:

1. The RESPONDENT is in wilful contempt of this Court's Order for failure to pay child support in the amount of $6,174.00.
2. The Sheriff of Fulton County is ordered to arrest the RESPONDENT as of the 6 day of June, 1995, and incarcerate (him) in the common jail of Fulton County until (he) pays the sum of $6,174.00 or otherwise full purges (himself) of said contempt.

APPENDIX

APPENDIX F - ORDER REFUSING FINANCIAL REVIEW IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA

GA Dept of Human Resources, ex rel Allison Hosch Petitioner	FILED JULY 24, 1995 CIVIL ACTION NO. FILE NO.: C79424
Roy L. Hosch Respondent	

ORDER

After having heard evidence from both parties this 10th day of July, 1995:
IT IS HEREBY ORDERED AND ADJUDGED:
Respondent has failed to provide proof of overpayments on his child support obligation.

NOW THEREFORE,

This Court's order of June 7, 1995 is hereby made a final order of this court and resolves the issue of child support arrears through June 5, 1996.

SO ORDERED,

This 20th day of July, 1995.

/S CHARLES A WOFFORD
Sr. Judge
Atlanta Judicial Circuit

APPENDIX

APPENDIX G - JUDGMENT DENYING APPELLANT'S PETITION FOR REHEARING IN COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALLS
FOR THE ELEVENTH CIRCUIT

No. 96-8454
Non-Argument Calendar
D.C. Docket No 1:96-CV-75-HTW
FILED: MARCH 21, 1997

ROY LEE HOSCH,
Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF HUMAN RESOURCES, FULTON COUNTY SUPERIOR COURT, KATHRYN REEDER, MARYE WARE,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

BEFORE: HATCHETT, Chief Judge, EDMONDSON and BARKETT, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant Roy Lee Hosch is denied.

ENTERED FOR THE COURT:

S/ R. Barkett
UNITED STATES CIRCUIT JUDGE

APPENDIX

APPENDIX H - JUDGMENT OF THE 11TH CIRCUIT COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALLS
FOR THE ELEVENTH CIRCUIT

No. 96-8454
Non-Argument Calendar

D.C. Docket No 1:96-CV-75-HTW

ROY LEE HOSCH,
Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF HUMAN RESOURCES, FULTON COUNTY SUPERIOR COURT, KATHRYN REEDER, MARYE WARE,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

BEFORE: HATCHETT, Chief Judge, EDMONDSON and BARKETT, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court

in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pay defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

Entered: January 9, 1997
For the Court: Miguel J. Cortez, Clerk

By S/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: 4/2/97